Supreme Court, U.S.
FILED
MAR 22 2016
OFFICE OF THE CLERK

No. 15-338

In the Supreme Court of the United States

MARK J. SHERIFF; SARAH SHERIFF; WILES, BOYLE, BURKHOLDER & BRINGARDNER CO., LPA; and MICHAEL DEWINE; Attorney General of Ohio,

Petitioners,

–v–

PAMELA GILLIE and HAZEL MEADOWS,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF ON THE MERITS OF RESPONDENTS ERIC JONES AND THE LAW OFFICE OF ERIC A. JONES, LLC IN SUPPORT OF PETITIONERS

BOYD W. GENTRY
COUNSEL FOR RESPONDENTS ERIC JONES AND THE LAW OFFICE OF ERIC A. JONES, LLC
LAW OFFICE OF BOYD W. GENTRY
4031 COLONEL GLENN HIGHWAY
BEAVERCREEK, OH 45431
(937) 839-2881
BGENTRY@BOYDGENTRYLAW.COM

MARCH 22, 2016

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REPLY BRIEF ON THE MERITS OF RESPONDENTS ERIC JONES AND THE LAW OFFICE OF ERIC A. JONES, LLC IN SUPPORT OF PETITIONERS

I. SPECIAL COUNSEL SHOULD BE ABLE TO ACT UPON HIS/HER APPOINTMENT AS AN OFFICER OF THE STATE WITHOUT FEAR OF LIABILITY

Special counsel are officers appointed by the Ohio Attorney General ("OAG") in accordance with state law. *See* R.C. § 109.08. State law outlines their duty "to represent the state in connection with all claims which are certified to the attorney general for collection." *See Id.* It also outlines that they "shall be paid for their services from funds collected by them " *See Id.* After appointment, each special counsel enters into a contract, which further details the nature of the relationship. Notably, special counsel are required by the OAG to use his letterhead in the course of their official work. *See* J.A.421. That is "because the state would like people to know when communications are coming from the state." *See Id.* Special counsel are also considered part of the "unclassified civil service" alongside any Assistant Attorneys General. *See* R.C. § 124.11(A)(11). Special counsel are trained by the OAG's staff and required to attend "in-house seminars." *See* J.A.331. More generally, special counsel can "perform all manner of special functions made possible only by the special statutory authority that they are granted under [R.C. §] 124.11. .[T]hese are not powers that could be granted under any contract. They can prosecute crimes. They can defend in the Court of Claims. They

can prosecute fraud under Workers Compensation and Medicaid and Civil Service laws [T]hey have special authority to collect under [R.C.§] 109.08." *See* J.A.332-33; *see also* R.C. §§ 109.07, 109.81, 109.83, 109.84. Finally, the practice of the OAG using special counsel is not new by any stretch.[1] *Compare* 97 Ohio Laws at 60, *with* 114 Ohio Laws at 53.

Special counsel are not simply "outside debt collectors" for the State of Ohio, nor are they treated that way. The retention agreement refers to their "appointment" and does not exclude them as officers, but only as employees.[2] *See* J.A.141-169. Given the understanding that they are officers and representatives of the State, special counsel take direction from the OAG, including the use of his letterhead when sending letters to state debtors. *See*

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[1] It should be noted that the United States Solicitor General has filed an amicus curiae brief with counsel for the Consumer Financial Protection Bureau (the "CFPB") in support of Plaintiffs' in this case. Richard Cordray, who now serves as the director of the CFPB, previously served as the Ohio Attorney General from 2009-2011, when Special Counsel were used to protect the state's bottom line. *See* Ohio Attorney General Annual Report, p.12, retrieved from http://goo.gl/ZTLGYq

[2] Plaintiffs claim that the OAG and special counsel have changed their position and their contract states that special counsel are not officers. This is incorrect. Plaintiffs are under the misunderstanding that special counsel's status as an independent contractor precludes him/her from also being an officer of the state. 15 U.S.C. 1692a(6) exempts both "employees" and "officers" recognizing that an officer may not be an employee. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (there is a "duty to give effect, if possible, to every clause and word of a statute.")

J.A.333. It is clear that special counsel are officers of the State of Ohio and should be able to rely on their appointments without fear of liability. Here, Jones clearly identified his and his law firm's role—he used his law office's return address on the envelope, signed his name to the letter, and referred to himself, truthfully, as "outside counsel" to the OAG. The only reference to the OAG was in the letterhead, which the OAG required Jones to use.

II. A State Government Is Free to Exercise Domain Over Sovereign Rights of the State

Plaintiffs provide this Court with a number of false dilemmas. The first is that the application of the FDCPA's "officer" exemption here would necessarily include all outside debt collectors for public entities. Supposedly, a reversal would allow anyone to be an "officer," making the FDCPA enforceable upon no one. *See* Resp.Br.17 That argument misses the point. The application of the "officer" exemption here merely draws on the Dictionary Act definition of the term "officer." Another false dilemma is that the position of the Jones Respondents supposedly requires that "Congress intended to leave consumers at the mercy of abusive outside debt collectors", and Congress would not have desired more abuse. *See* Resp.Br.18. But that expansive view of the FDCPA has the potential to extinguish all exemptions and limits on the statute because Congress could always theoretically "do more" to curb supposed abuses. The Plaintiffs also rely upon *United States v. Wells*, 519 U.S. 482 (1997) for the proposition that "Congress is presumed to have embraced the historical understanding of "officer" as set out in this Court's

precedents and common law." *See* Resp.Br.19. Unfortunately, *Wells* only states that this is true where "the statute [does not] otherwise dictat[e]." *See Wells* at 491. Here, the Dictionary Act does "otherwise dictate." In addition, the Plaintiffs rely upon numerous cases that focus on the definition of the term "officer" in the Constitution as well as cases that were decided well after the Dictionary Act was passed and simply do not incorporate any historical meaning of the term "officer."

A. The Dictionary Act Provides the Correct Definition for the Term "Officer"

The Dictionary Act was passed in 1871 with the definition of the term "officer" being the same as it is today, broadly including "any person authorized by law to perform the duties of the office." *See* 1 U.S.C. § 1. As the Dictionary Act provides definitions to statutory terms that are left undefined in federal statutes, specifically here the FDCPA, "it must be consulted" by the Court "unless context indicates otherwise." *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2768 (2014). The context of the FDCPA does not indicate that Congress had any intent to defin[illegible] the term "officer."[3] Instead of looking to the Dictionary Act, Plaintiffs attempt to re-cast the historical definition of the term "officer" by looking at non-analogous cases as well as those decided long after the 1871 passage of the Dictionary Act. There is simply no way that these cases help define the historical meaning of the term "officer" as it is

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[3] Congress knows how to supersede the Dictionary Act and has done so before. *See* 5 U.S.C. § 2104; 10 U.S.C. § 101(b)(1).

encompassed in the Dictionary Act. Finally, Plaintiffs rely upon cases that focus only on the more narrow Constitutional definition of the term "officer." These attempts only succeed in proving the natural divide that this Court has drawn between cases where an officer was established by law to a position that involved sovereign duties, and cases lacking one or both of these qualities.

Plaintiffs first point to *Metcalf & Eddy v. Mitchell*, a case where engineers were "professionally employed" to advise States about "proposed water supply and sewage disposal systems. *See Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 518 (1926). This Court correctly found that these engineers were not "officers" under the War Act as their work did not involve any sovereign duties. *See Id. Metcalf* also found that the engineers were not appointed by government to any office, their duties, business, and compensation were not provided for in a statute and their work was not continuous. *See Metcalf* at 520. Some engineers worked as long as specific assignments may last while others worked from year to year. *See Id.* Lastly, the relationship between the engineers and the State was entirely prescribed by contract (where the Court could not find reference to any statutory authority). *See Id.* Notably, the engineers in *Metcalf* were not in a position established by law nor were they handling any sovereign duties of the state and thus, were not officers according to the Dictionary Act definition.

The *Metcalf* opinion then specifically dives into the very divide contemplated here, listing a myriad of cases where the "government immediately and

directly exercises its sovereign powers." *See Metcalf, supra* at 522. Noticeably, each case where this Court found the existence of sovereign powers includes either the power to administer and enforce laws or the handling of public funds. *See Metcalf* at 522; *see also Weston v. City Council of Charleston*, 29 U.S. 449, 467 (1829) (state obligations sold to raise public funds); *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 585-86 (1895) (state obligations sold to raise public funds); *United States v. Railroad Co.*, 84 U.S. 322 (1872) (investment of public funds); *Ambrosini v. United States*, 187 U.S. 1 (1902) (bonds required for exercise of police power).

Plaintiffs then cite to numerous cases, all of which support the same divide. The party in *Maurice* was not properly appointed to an office that was established by law. *See United States v. Maurice*, 26 F. Cas. 1211, 1214 (C.C.D. Va. 1823)(No. 15,747). In *U.S. v. Germaine,* the surgeon was properly appointed by law to examine pension applicants but this was clearly not a sovereign function. *See United States v. Germaine*, 99 U.S. 508 (1878). In *Hall v. Wisconsin*, this Court found that the parties were not officers where there was a state statute requiring the governor to "make a written contract" with geologists to conduct surveys but the statute did not outline the position at all. *See Hall v. Wisconsin*, 103 U.S. 5, 8-9 (1880). This conclusion makes sense as the governor was not authorized to appoint anyone, and the position involved no sovereign duties. *See Id.* Finally, in *Burnap v. United States,* this Court found that the party was not an officer where "[t]here is no statute which creates an office of landscape architect." *See Burnap v. United States*, 252 U.S. 512, 517 (1920).

Again, this case is consistent with the natural divide, where: 1) the position was not authorized by law; and 2) a landscape architect presumably had no sovereign function.

Conversely, the officer in *Hartwell* was appointed by law and was handling public funds (a sovereign duty). *See United States v. Hartwell*, 73 U.S. 385 (1867). Likewise, in *Freytag v. Comm'r*, this Court found that special judges were officers because the "office is established by law," with "duties, salary and means of appointment specified by statute." *See Freytag v. Comm'r*, 501 U.S. 868, 880 (1991). Among other things, they carry out "important functions" and "exercise significant discretion" interpreting federal law. *See Id.* Noticeably, these appointments are established by law and the officers carry out sovereign duties.

These same cases are also largely distinguishable from this case because they look to the Constitutional definition of the term "officer" instead of how it appears in the Dictionary Act. *See Metcalf, supra*[4]; *Maurice* at 1213; *Germaine* at 509; *Burnap* at 514-15; *Hartwell* at 393-94; *Freytag* at 892. While the Constitution uses the term "officer," the definition is remarkably narrow and does not encompass the meaning from the Dictionary Act. If the meaning of the term "officer" is derived solely

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[4] *Metcalf* involved a tax statute where Court at the time would not allow the taxing of state officers and this Constitutional commandment, which has since been overruled, had been codified by Congress. *See Metcalf, supra.* Because of this, the *Metcalf* case is really about the definition of the term "officer" as it appears in the Constitution.

from cases that look to the Constitution, the Dictionary Act would be superfluous. But when looking at "inferior officers" under the Constitution, it becomes clear that special counsel are in fact officers.

In *Morrison v. Olson*, this Court found that independent counsel were officers where they: 1) were subject to removal by the Attorney General; 2) were "empowered by the Act to perform only certain, limited duties"; 3) did not formulate policy; 4) were required to comply "with the policies of the Department"; and 5) their office was "temporary" and for a single task. *See Morrison v. Olson*, 108 S.Ct. 2597, 2608-09 (1988). Independent counsel sounds virtually identical to special counsel except that special counsel does not have a "temporary," single task, instead being appointed for yearly terms. To be clear, Ohio has provided the OAG with statutory authority to appoint (and inherently also to remove) special counsel, which he does in yearly terms. Special counsel do not formulate policy but are required to abide by the standards set for the office of the OAG.[5]

Plaintiffs continue, making much of the fact that special counsel enter into contracts with the OAG, claiming this proves the position was not "established by law." *See* Resp.Br.21. This claim upends common sense, history and the legal context

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[5] It should also be noted that the decision in *Morrison* falls along the same natural divide as the other "officer" cases. Independent counsel was 1) established by the Ethics in Government Act (*see Morrison* at 2603); and their duties were the "investigation and prosecution for certain federal crimes." *See Morrison* at 2609.

surrounding the Dictionary Act. Looking again to *Hartwell*, this Court found that the defendant was an "officer" even though his duties were "to be such as his superior in office should prescribe." *See Hartwell, supra* at 393. Likewise, a law that did not specify a deputy sheriff's pay allowed a sheriff to contract with the deputy as it relates to pay and where a law did not fix an officer's term, an at-will position was created. *See* Floyd Mechem, *A Treatise on the Law of Public Offices and Officers*, § 379, p. 250 and § 445, p. 284. The fact that contracts exist between the OAG and special counsel does not exclude special counsel from being considered officers. In fact, this argument is only pertinent in determining whether special counsel are employees of the OAG, which admittedly, they are not. *See Metcalf, supra* at 173 (discussion about characterization as employee or independent contractor). Any discussion about the independent contractor relationship is also irrelevant because it is the statutory authority (R.C. § 109.08) that creates the authority to act.

Plaintiffs argue that there is no "office of [the] special counsel" but miss the mark. *See* Resp.Br.22. This formalistic approach fails the substance of the definition of "officer", looking to the identity of an "office" instead of the duties of the person. Indeed, in *Filarsky,* this Court found that there was "no very clear conception of a professional office," where someone "devotes his entire time to the discharge of public functions." *See Filarsky v. Delia*, 132 U.S. 1657, 1662 (2012). Accordingly, there was some other measure of an "office." Mechem defines an office as "the right, authority and duty, created and conferred by law, by which for a given period, either fixed by

law or enduring at the power of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. *See* Floyd Mechem at § 1, p. 1-2. *Hartwell* is also instructive, where despite the lack of creation of an "office of the clerk," the defendant was still an officer. *See Hartwell, supra* at 392-93. This is because the duties in *Hartwell* involved handling public funds, which is traditionally considered a sovereign function.

Plaintiffs' claims also overlook other portions of special counsel's relationship with the OAG, including the fact that the OAG contractually requires special counsel to follow the FDCPA. *See* J.A.162-63. The OAG recognized that special counsel are exempt from the FDCPA and wanted to impose these standards nonetheless. Additionally, the OAG has stated that each special counsel is assigned an account representative from the OAG's office to help in the handling of accounts. *See* J.A.101. Assistant Attorneys General often work with special counsel to "draft pleadings," "join cases as co-counsel" and "cover cases for Special Counsel in special circumstances." *See* J.A.102.

B. The Clear Statement Rule is not Satisfied

Next, Plaintiffs inaccurately claim that the clear statement rule of *Gregory* is only employed "where federal legislation threatens a 'radical[ ] readjust[ment],' 'significant change,' or 'dramatic[ ] intru[sion]' with respect to the federal-state balance." *See* Resp. Br 36. But such a statement is inaccurate, because it also applies where "federal legislation threaten[s] to trench on the State's chosen disposition of its own

power." *See Nixon v. Mo. Mun. League*, 541 U.S. 125, 140 (2004); *see also Jackson v. Sedgwick Claims Mgmt. Servs., Inc.*, 731 F.3d 556, 567 (6th Cir. 2013) (en banc). It is this very balance that has created such "staggering diversity" in how states governs. *See Avery v. Midland Cnty.*, 390 U.S. 474, 482-83 (1968).

This case is not just about two letters, but the rights of all states to direct their appointed officers. This Court has respected the bounds of federalism in much less radical ways than Plaintiffs claim. *See Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 439 (2002) (interpreting federal law so that it allowed for the States to decide how best to divide authority between "the State's central and local units.") A state's choice to use special counsel is a structural choice akin to that in *Ours Garage, supra.* Likewise, this Court respected the way states structured their affairs as they relate to § 1983. *See Filarsky,* 132 S.Ct. at 1662-65. These cases indicate the necessity of interpreting the "officer" exemption of the FDCPA so that it does not exclude people that a state has statutorily appointed as officers.

Despite this, Plaintiffs return again to the argument that Defendants are unable "to represent that they <u>are</u> the Attorney General or part of his office." *See* Resp.Br.46. This highlights the reason for the clear statement rule. Ohio has chosen to appoint individuals as special counsel instead of merely contracting with outside companies. The clear statement rule requires that this Court interpret the FDCPA so that it does not "upset the usual constitutional balance of federal and state powers"

unless it is "unmistakably clear in the language of the statute" that this was Congress' intent. *See Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991). This language here is not clear and the clear statement rule has not been satisfied.

III. THE DUNNING LETTERS, WHEN REVIEWED IN THEIR ENTIRETY, CANNOT BE MATERIALLY MISLEADING

Plaintiffs incorrectly argue that there is no materiality requirement in determining whether a party has violated § 1692e(1)-(16). Although "Congress painted with a broad brush in the FDCPA not every technically false representation by a debt collector is a violation of the FDCPA." *See Gabriele v. Am. Home Mortgage Servicing, Inc.*, 503 F. App'x 89, 94 (2d Cir. 2012); *see also Miller v. Javitch, Block & Rathbone*, 561 F.3d 588, 596 (6th Cir. 2009) (complaint mischaracterizing credit card debt as loan was not materially false or misleading under the FDCPA); *Warren v. Sessoms & Rogers, P.A.*, 676 F.3d 365, 374 (4th Cir. 2012) ("courts have generally held that violations grounded in 'false representations' must rest on material misrepresentations"); *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1034 (9th Cir. 2010) (mislabeling in state complaint of interest owed on debt was not a material misrepresentation under the FDCPA); *Hahn v. Triumph P'ships LLC*, 557 F.3d 755, 758 (7th Cir. 2009) (Easterbrook, C.J.) ("a false but non-material statement is not actionable" under the FDCPA because "[a] statement cannot mislead unless it is material"). Plaintiffs are unable to navigate around the significant weight of case law reading a "materiality" requirement into the FDCPA.

A. The Dunning Letters Were Not Misleading at All, Much Less Materially Misleading

Plaintiffs continue, criticizing the Jones Respondents' position that the letter accurately conveys the relationship between special counsel and the OAG. *See* Resp.Br.42. They allege that the letterhead "falsely conveys the impression that [the OAG] 'issued' the letter, not just that someone else wrote it 'on his behalf.'" *See Id.* But the facts here do not bear out this contention, as the OAG stated that when debtors call his office regarding the dunning letters in question "[t]he debtors are assured that the debt is valid and being collected at the direction of the Attorney General." *See* J.A.101 (emphasis added).

Despite this, Plaintiffs point to several outlying cases with non-analogous facts in an attempt to bolster their claims. In *Del Campo v. Am. Corrective Counseling Serv., Inc., Schwarm v. Craighead*, and *Gradisher v. Check Enforcement, Unit, Inc.*, the letters were considered a potential violation of § 1692e because of the fact that none of the senders disclosed their identity at all. *See Del Campo v. Am. Corrective Counseling Serv., Inc.*, 718 F.Supp.2d 1116, 1134 (N.D. Cal. 2010); *Schwarm v. Craighead*, 552 F.Supp.2d 1056, 1076 (E.D.Cal 2008); *Gradisher v. Check Enforcement Unit, Inc.*, 210 F.Supp.2d 907, 914 (W.D. Mich. 2002). Additionally, Plaintiffs repeatedly conflate the idea that something is confusing with the idea that something is materially misleading.[6] *See* Resp.Br.55. Indeed, Plaintiffs state

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[6] Mislead is defined as "[t]o lead astray in action or conduct." *See* 9 Oxford English Dictionary 873.

that they were afraid they would be charged with a crime or that their wages would be garnished. *See* Resp.Br.10. But the letters do not represent anything about charging Plaintiffs with crimes or garnishing wages. Their alleged "confusion" did not come from the letters. *See* Pet.App.55a and 57a.

The letters sent to Plaintiffs were not materially misleading.[7] Plaintiffs pointed to no case law supporting their position that the letter in this case was materially misleading: The letters were true and clear.

1. There is No Violation of § 1692e(9)

After denying the materiality requirement discussed above, Plaintiffs then parse the language of 15 U.S.C. 1692e(9) to claim that the letters simulate those issued by the Attorney General, creating "a false impression as to its source." *See* Resp.Pet.41 (emphasis included). But Plaintiffs inaccurately state that the Jones letter included the words "Office of the Ohio Attorney General" when the letterhead on the Jones dunning letter actually only states "Mike DeWine Ohio Attorney General." *See Id.* Although a seemingly minor misstatement, this inaccuracy wrongly bolsters their claim regarding the source of the dunning letter. In fact, the letter does not state that it is from the "Office of the Ohio Attorney

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[7] The 6th Circuit in *Miller, supra* found that a communication should be "read in its entirety, carefully, and with some elementary level of understanding. *See Miller, supra* at 595; *see also Compuzano-Burgos v. Midland Credit Mgmt., Inc.*, 550 F.3d 294, 299 (3d. Cir. 2008). Plaintiffs cannot pick out pieces of a communication but must look to the entire communication.

General" but clearly states that it is from the "Law Office of Eric A. Jones, L.L.C." and the debtor should make payments to "Eric A. Jones, L.L.C." *See* Pet.App 14a.

Unlike in *Del Campo, Schwarm,* and *Gradisher,* special counsel are appointed by statutory authority and also have a contractual relationship with the OAG. Special counsel are unclassified civil servants, not simply outside contractors. *See* R.C. § 124.11(A)(11). Moreover, unlike the above-mentioned cases, Jones clearly identified his and his law firm's role–he used his law office's return address on the envelope, signed his name to the letter, and referred to himself, truthfully, as "outside counsel" to the OAG. The only reference to the OAG was in the letterhead, which the OAG required Jones to use. One court in the 6th Circuit recently distinguished *Gradisher* for similar reasons. *See Golem v. Palisades Acquisition XVI, LLC,* No. 1:11CV02591, 2012 WL 2995480, *3 (N.D. Ohio July 23, 2012) (rejecting claim that a law firm's use of a caption stating "Berea Municipal Court" was misleading, because the document indicated it was sent by and directed questions to the law firm). The reality is that Plaintiffs' claim regarding the "source" of this letter is not supported here, instead only being supported in cases where the actual sender of the letter does not disclose their identity at all.

Plaintiffs claim that "[t]he problem with the Attorney General's letterhead is that it falsely conveys the impression that his office "issued" the letter, not just that someone else wrote it "on his behalf." But this impression also happens to be an

accurate one, as an entity cannot act except through its representatives. Plaintiffs claim that special counsel do "not need to use Attorney General letterhead to convey that" (*See* Resp.Br.43) but that is not the choice of special counsel. That decision was made by the OAG, relying on Ohio law allowing him to appoint special counsel and require the use of his letterhead. *See* J.A.421. Because special counsel "represent the state" (*See* R.C. § 109.08) and in turn the OAG, the implication that it was written on behalf of his office is not a misleading one, much less materially so.

Finally, Plaintiffs resort to a weak analogy to IBM: an independent contractor using IBM letterhead to collect a debt owed to IBM would mislead consumers. That argument is erroneous on two counts. First, special counsel is not a debt collector under the FDCPA because of the "officer" exemption (as discussed above). Second, special counsel act on behalf of the OAG through their statutory appointment. In effect, each special counsel stands in the shoes of the OAG himself, and not merely as an agent, but as a statutorily appointed officer.

2. There is No Violation of § 1692e(14)

Plaintiffs claim that the Defendants violated § 1692e(14) of the FDCPA because the OAG is not the "true name of the debt collector's business." But this argument is completely irrelevant to the analysis of this section. The Jones Respondents are able to correctly use several "true names"—Jones' own name, that of the OAG to whom he has been appointed to serve, and that of his private business which provides him with office space. This section

simply "forbids the use of a pseudonym" that would make it difficult for a consumer to discover a debt collector's identity. *See White v. Goodman*, 200 F.3d 1016, 1018 (7th Cir. 2000). In fact, the use of multiple, true names is consistent with the FDCPA so long as that name "does not misrepresent his identity or deceive the consumer." *See* Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50,097, 50,107 (Dec. 13, 1988). Furthermore, Plaintiffs cannot point to any authority showing that the use of multiple, true names is inconsistent with the FDCPA.

In this context, it is logical that the letter would appear on OAG letterhead, contain Jones' individual name and position with the OAG in the signature block, and provide the name and address of the LLC where the debtor can obtain more information and send payment. This is no different than how a letter from an Assistant OAG "employee" might appear–the individual writing the letter would use OAG letterhead, list his own name and position with the OAG, and direct the debtor where to send payment. No one would argue that the Assistant OAG was not using his "true name" when he used OAG letterhead and such a claim should be rejected here as well.

In another attempt to bolster their argument, Plaintiffs again cite to several non-analogous cases. The first case is *Mahan v. Retrieval-Masters Credit Bureau, Inc.*, where a collection agency did not violate § 1692e(14) when it used a licensed trade name to collect on a debt owed by the plaintiff. *See Mahan v. Retrieval-Masters Credit Bureau, Inc.*, 777 F.Supp.2d 1293, 1300-01 (S.D. Ala. 2011). The first

obvious difference is that *Mahan* deals with a private entity collecting debt as opposed to a state attorney general and his officers. Aside from this, the court in *Mahan* also stated that "debt collectors may use alternative names they are legally entitled to use, and that are not misleading." *See Id.* at 1300 (internal quotations and citations omitted). Here, special counsel is legally entitled by statute and required by the OAG to use the OAG's name and letterhead. The use of this alternative name is not misleading, as discussed above, but instead portrays an accurate relationship between the parties.

Next, Plaintiffs cite to *Peter v. GC Servs., L.P.*, where a debt collector hired (not appointed) by the U.S. Department of Education, used the Department's address as its return address on an envelope. *See Peter v. GC Servs., Inc.*, 310 F.3d 344, 352 (5th Cir. 2002). Unlike *Peter*, Plaintiffs in this case admit in their complaint that "the envelope containing the letter had the return name and address of Law Office of Eric A. Jones., L.L.C." *See* J.A.43. Because of this fact, *Peter* wholly supports the Defendants in this case, stating:

> By convention the name and address placed in this corner is that of the return addressee, or the sender of the mail.[6] By using the department as the return addressee, GC Services represented the sender of the mail as the Department of Education, when in fact it was GC Services. Thus, GC Services used the Department of Education name as its own, violating § 1692e(14).

Peter v. GC Servs. L.P., 310 F.3d 344, 352 (5th Cir. 2002).

Finally, Plaintiffs cite to two district court cases where the defendants apparently sent out letters to the debtors in the name of their clients without identifying themselves at all. *See Carrizosa v. Staminos*, No. C-05-02280 RMW, 2010 WL 4393900, at *2 (N.D. Cal. Oct. 29, 2010) (where debt collector sent dunning letter under client's name with no identification of debt collector at all); *see also Hartman v. Meridian Fin. Servs., Inc.*, 191 F.Supp.2d 1031, 1046 (W.D. Wis. 2002) (same). Here, special counsel has truthfully provided the debtors with all of the pertinent information. First, the letter is about a debt owed to the State of Ohio. Second, the officer sending the letter (Jones) is "outside counsel for the Attorney General's Office." Third, the "Law Office of Eric A. Jones, L.L.C." is one place where the debtor can get more information about the debt. None of those "true names" and associations are false or misleading.

Plaintiffs entire case rests on the allegation that the use of the OAG letterhead convinces a debtor to prefer the state debt over private debt and creates a "sense of urgency." *See* Resp.Br.52. If that is true, why would it be illegal to say it? The involvement of the state and the OAG is what stirs any sense of urgency. The unique remedies available to the state (tax refund impact, etc.), make state debts different from private debts. There has been no violation of the FDCPA.

CONCLUSION

The decision of the Sixth Circuit Court of Appeals should be reversed, and the District court should be directed to enter summary judgment in favor of the Defendants.

Respectfully submitted,

BOYD W GENTRY
COUNSEL FOR RESPONDENTS ERIC JONES AND THE LAW OFFICE OF ERIC A. JONES, LLC
LAW OFFICE OF BOYD W GENTRY
4031 COLONEL GLENN HIGHWAY
BEAVERCREEK, OH 45431
(937) 839-2881
BGENTRY@BOYDGENTRYLAW.COM

MARCH 22, 2016